

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SERVICE EMPLOYEES INTERNATIONAL UNION,
DAVID REGAN and ELISEO MEDINA, as trustees for
SEIU UNITED HEALTHCARE WORKERS-WEST
and fiduciaries of the SEIU UNITED HEALTHCARE
WORKERS-WEST AND JOINT EMPLOYER
EDUCATION FUND, SEIU UNITED HEALTHCARE
WORKERS-WEST, an unincorporated association and
fiduciary of the SEIU UNITED HEALTHCARE
WORKERS-WEST AND JOINT EMPLOYER
EDUCATION FUND, and REBECCA COLLINS, as a
participant in the SEIU UNITED HEALTHCARE
WORKERS-WEST AND JOINT EMPLOYER
EDUCATION FUND,

Plaintiffs,

v.

SAL ROSELLI, JORGE RODRIGUEZ, JOAN
EMSLIE, JOHN BORSOS, JOHN VELLARDITA,
GABE KRISTAL, PAUL KUMAR, MARTHA
FIGUEROA, BARBARA LEWIS, PHYLLIS
WILLETT, DANIEL MARTIN, LAURA KURRE,
RALPH CORNEJO, WILL CLAYTON, GLENN
GOLDSTEIN, FRED SEAVEY, MARK KIPFER,
AARON BRICKMAN, IAN SELDEN, GAIL
BUHLER, FREJA NELSON, ANDREW REID,
NATIONAL UNION OF HEALTHCARE WORKERS;
MARYRUTH GROSS, CONNIE WILSON, ARLENE
PEASNALL, CHERIE KUNOLD, FAYE LINCOLN,
and DOES 1 through 100, inclusive,

Defendants.

No. C 09-00404 WHA

**ORDER REGARDING
SECOND REQUEST
TO MODIFY THE
TRO; MOTION TO
SHORTEN TIME; AND
MOTION FOR A
PROTECTIVE ORDER**

Defendants have filed a “second request to modify temporary restraining order” (Dkt. No. 109). The request complained of an “email blast” that plaintiffs allegedly sent to an

1 unknown number of SEIU-UHW members regarding the TRO. It complained that the email
2 abused the TRO by implying that NUHW supporters could face sanctions for lawful activities.

3 Plaintiffs opposed the request, asserting that the email was sent only to UHW's own
4 elected stewards and that it fairly represented the terms of the TRO as well as applicable
5 Federal Rules of Civil Procedure. A reply was invited and was filed (accompanied by
6 numerous declarations). Defendants argued that UHW's communications were improper —
7 "vague and overbroad" — because they suggested exposure to liability for conduct outside the
8 scope of the TRO. Defendants raised new factual allegations in the reply brief. *First*, they
9 claimed that UHW staff and/or organizers had misused the TRO by disrupting HUHWS's right to
10 access, and organize at, work sites. They gave examples in which one defendant, Gail Buhler,
11 and other non-defendants (allegedly) were told to leave work sites under threat of the TRO.
12 *Second*, they claimed that UHW stewards who are actually NUHW supporters have been
13 deterred from organizing their co-workers to join NUHW, and are thus having their speech or
14 organizing rights chilled by the threat of litigation. Defendants alleged widespread confusion
15 on the part of stewards (or others) about what the TRO does and does not prohibit.

16 Plaintiffs filed a (proposed) sur-reply brief and a motion to strike. Plaintiffs argued that
17 all new allegations and declarations raised for the first time in the reply brief should be stricken.
18 They further contended that any concerns about UHW stewards being inhibited from organizing
19 on behalf of *NUHW* are misplaced because under federal law, UHW stewards have fiduciary
20 duties to UHW and cannot act on behalf of NUHW. Finally, the sur-reply stated that UHW has
21 sent follow-up emails clarifying how the TRO should and should not be used.

22 With the exception of the allegations concerning defendant Buhler (raised for the first
23 time in the reply brief), all of these motions concern alleged adverse impacts upon third-party
24 stewards and others. None of these parties are before the Court. If any of these persons wish to
25 intervene and seek relief directly against either side, either to modify the TRO or to enforce it,
26 the Court will consider such a motion.

27 The present motions are simply the two original sides trying to hide behind alleged
28 problems with third parties. This is too remote. The TRO will not be modified upon the

present motions. All relief on the “second request to modify temporary restraining order” is **DENIED**, without prejudice to a steward or other third party filing a motion to intervene to seek relief (or to enforce the TRO). Similarly, defendant Buhler or other defendants may bring a proper motion to enforce their own rights.

* * *


For the same reasons, defendants’ motion to shorten time for a hearing on a motion for stay of the TRO pending appeal is **DENIED** (Dkt. No. 149). No actual motion for a stay has been filed, and the Court is unable to evaluate any such motion and determine what schedule may be appropriate without the benefit of the motion. Moreover, based on the current motion to shorten time, it appears that the anticipated stay motion will be based at least in part on the same complaints as the “second request to modify the TRO” (and ensuing briefing thereon) — *i.e.*, alleged adverse impacts of stewards or others not before the Court.

* * *

Finally, defendants have filed a motion for a protective order (Dkt. No. 124). The motion raises two issues: (1) it requests a schedule for litigating attorney-client privilege issues including thirty days to prepare a privilege log; and (2) it requests that defendants be relieved of any burden to catalog and describe private materials on their computers. The parties have also filed a stipulation to file certain (possibly privileged) communications between UHW and Morrison & Foerster under seal with the Court pending a schedule on the attorney-client privilege issues (Dkt. No. 143). This case has been referred to Magistrate Judge Maria-Elena James for discovery purposes; these matters should be presented to Judge James.

IT IS SO ORDERED.

Dated: April 23, 2009.


 WILLIAM ALSUP
 UNITED STATES DISTRICT JUDGE